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SUPREME COURT OF THE UNITED STATES.

No. 68.

JOHN S. RUSSWURM & WILLIAM LEDBETTER, PLAINTIFFS IN ERROR,

vs.

KONES, DAVIDSON & CO.

IN ERROR TO THE CIRCUIT COURT U. S., FOR THE MIDDLE DISTRICT OF TENNESSEE.

THE UNITED STATES, *ss:*

(SEAL.) The President of the United States to the Judge of the Circuit Court of the United States, for the District of Middle Tennessee, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which in the said circuit court, before you, or some of you, between Kones, Davidson & Co., plaintiffs, and John S. Russwurm and William Ledbetter, defendants, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, we command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected by the said Supreme Court, may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Esq., Chief Justice of the said Supreme Court, the first Monday of September, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States the 63d.

JACOB W. GAVOCK,
Clerk of Cir. Ct. for Dist. of Mid. Tenn.

(SEAL.) THE UNITED STATES,
Eighth Circuit, District of Middle Tennessee.

To Theodore M. Kones, William Davidson, Elias S. Sandford and William B. Fry, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the 8th circuit, in the district of Middle Tennessee, wherein John S. Russwurm and William Ledbetter are plaintiffs in error, and said Theodore M. Kones, William Davidson, Elias S. Sandford, and William B. Fry are defendants, to show cause, if any there be, why the judgment rendered against the said John S. Russwurm and William Ledbetter, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Esq., Chief Justice of the Supreme Court of the United States, the first Monday in September, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States the sixty-third.

JACOB W. GAVOCK, *Clerk, &c.*

COUNTY, *ss:*

On this day of , in the year of our Lord one thousand eight hundred and twenty , personally appeared before me, , and being duly sworn, deposeth and saith, that on the day of he delivered a true copy of the above citation to .

I acknowledge service of this citation, on this 24th day of December, 1839.

THOS. WASHINGTON,
Att'y for Def'ts in error.

MIDDLE DISTRICT OF TENNESSEE, *ss:*

At a circuit court of the United States, begun and held at Nashville, in and for the district of Middle Tennessee, on the first Monday, being the second day of September, in the year of our Lord one thousand eight hundred and thirty-nine, and in the year of the Independence of the United States.

Present, the Honorable John Catron, one of the associate justices of the Supreme Court of the United States, and the Honorable Morgan W. Brown, judge of the courts of the United States for the districts of east, middle and west Tennessee.

THEODORE M. KONES, and
WILLIAM DAVIDSON, and
ELIAS S. SANDFORD, and
WILLIAM B. FREY, Plt'ffs,
vs.
JOHN S. RUSSWURM, and
WM. LEDBETTER, Defts.

John S. Russwurm and William Ledbetter, citizens of the State of Tennessee, were summoned, by a writ of summons issued the 18th day of April, 1839, and returnable on the first Monday in June next thereafter, to answer Theodore M. Kones and William Davidson, citizens of the State of Louisiana, and Elias S. Sandford and William B. Fry, citizens of the State of Connecticut, all merchants and partners in trade, trading under the firm and style of Kones, Davidson, & Co., of a plea of trespass on the case, to their damage four thousand dollars.

And at rules, holden in the office of the clerk of said court, for the month of July, 1839, the plaintiffs, by their attorney, filed their declaration thereupon, as follows:

CIRCUIT COURT OF U. S., MIDDLE DISTRICT OF TENNESSEE, *ss:*

Theodore M. Kones and William Davidson, citizens of the State of Louisiana, and Elias S. Sandford and William B. Fry, citizens of the State of Connecticut, all merchants and partners in trade, trading under the firm and style of Kones, Davidson & Co., by attorney, complain of John S. Russwurm and William Ledbetter, citizens of the State of Tennessee, summoned, &c., of a plea of trespass on the case.

For that a certain Martin Clark, who is not sued in this action, on the 2d day of April, 1838, in the district aforesaid, made his writing obligatory of that date, signed with his name, and sealed with his seal, which is now here to the court shown, whereby he promised, twelve months after the date thereof, to pay to John S. Russwurm, or order, at the Union Bank of the State of Tennessee, at Nashville, three thousand five hundred dollars, value received, and delivered the same to the said John S. Russwurm, who then and there endorsed and delivered the same to *to* the defendant, William Ledbetter, who then and there endorsed and delivered the same to the plaintiffs. And the said Martin Clark did not pay the said sum of money in said writing obligatory specified, although the same was presented and shown for payment, and payment thereof demanded at the said Union Bank of the State of Tennessee, at Nashville, on the day when the same became due and payable, according to the tenor and effect thereof. Whereupon the said writing obligatory was then and there duly protested for non-payment; of all which, the defendants then and there had due notice.

By means whereof, the defendants became liable to pay to the plaintiffs the said sum of money, in said writing obligatory specified; and being so liable, and in consideration thereof, they, the defendants, undertook, and then and there faithfully promised the plaintiffs to pay them the same on request.

Yet, although often requested, the defendants have not paid the plaintiffs the said sum of money, in said writing obligatory specified, nor any part thereof, but so to do, have hitherto wholly failed and refused, and still do fail and refuse, to the plaintiffs' damage four thousand dollars; and therefore they sue.

THOS. WASHINGTON,
Attorney for Plaintiffs.

And at rules, holden in the clerk's office of said court, for the month of July, 1839, rule by plaintiffs for plea; and at September rules, 1839, no plea being filed, plaintiffs take judgment by default.

Wednesday, 4th September, 1839.—The plaintiffs, by their attorney, appear, and a judgment by default having been entered in this cause at September rules, 1839, and no motion having been made to have the same set aside, it is therefore considered by the court, that said judgment by default be affirmed, and that the plaintiffs recover of the defendants their damages, sustained by reason of the non-performance of the promises and undertakings in the declaration mentioned. But the court not being advised as to the amount of those damages, a jury of good and lawful men is empanelled, to wit: Isaac I. Thomas McCoy, W. Campbell, Richard White, Alexander Moore, Christopher E. McEwen, Elihu S. Hall, William H. Bedford, William Johnson, Robert P. Lockridge, Joseph Voulx, James A. Porter and Joseph Robb, who, being elected, tried, and sworn well and truly to enquire thereof, on their oaths do say, they assess the plaintiffs' damages, by reason of the premises, to three thousand five hundred and eighty-eight dollars and ninety-two cents. Therefore it is considered by the court, that the plaintiffs recover of the defendants their damages, by the jury so assessed, and their costs in this behalf expended; and that they have their execution.

And on the 17th day of September, 1839, the parties, by their attorneys, again appear; and the defendants, by their attorneys, pray a writ of error to the Supreme Court of the United States, to be held at Washington, on the second Monday in January next; which, upon their giving bond with surety as required by law, is granted—which bond is in the words and figures following, viz:

Know all men by these presents, that we, John S. Russwurm, and William Ledbetter, and William H. Bowman, of the middle district of Tennessee, are held and firmly bound unto Theodore M. Kones, William Davidson, Elias S. Sandford, and William B. Fry, in the penal sum of seven thousand one hundred and seventy-seven dollars eighty-four cents; which payment, well and truly to be made and done, we bind ourselves, our heirs, executors and administrators,

jointly and severally, firmly by these presents; sealed with our seals, and dated this 17th day of September, A. D. 1839.

The condition of the above obligation is such, that whereas the above bound John S. Russwurm and William Ledbetter have, this day, prayed and obtained a writ of error to the Supreme Court of the United States, held at Washington city, on a judgment, obtained in the circuit court of the United States for the middle district of Tennessee at September term, 1839, by the said Elias S. Sandford and William B. Frey, citizens of the State of Connecticut, and Theodore M. Kones and William Davidson, citizens of the State of Louisiana, against said John S. Russwurm and William Ledbetter, citizens of the State of Tennessee, for the sum of $3,588 92.

Now, if the said John S. Russwurm and William Ledbetter shall well and truly prosecute said writ of error with effect, or, in case of failure, pay to the said plaintiffs all such damages and costs as said Supreme Court of the United States shall award against them, then, the above obligation to be void, else to remain in full force and effect.

JOHN S. RUSSWURM, (SEAL.)
WILLIAM LEDBETTER, (SEAL.)
By John Trimble, his Attorney, in fact.
WILLIAM H. BOWMAN, (SEAL.)

MIDDLE DISTRICT OF TENNESSEE, *ss:*

I, Jacob W. Gavock, clerk of the circuit court of the United States for the district aforesaid, do certify, that the foregoing is a correct transcript from the records of said court of the suit, Kones, Davidson & Co., plaintiffs, against John S. Russwurm and William Ledbetter, defendants.

In testimony whereof, I hereto subscribe my name, and (SEAL.) affix the seal of said court, at office in Nashville, this 5th day of December, A. D. 1839.

JACOB W. GAVOCK.